

JUDGE NATHAN

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
Southern District of New YorkALTAGRACIO DE LA CRUZ
(AKA EDWARD PICHARDO)*Petitioner*

v.

DEPARTMENT OF HOMELAND SECURITY

Respondent

(name of warden or authorized person having custody of petitioner)

20 CV 2219

Case No.

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: ALTAGRACIO DE LA CRUZ
(b) Other names you have used: EDWARD PICHARDO
2. Place of confinement:
(a) Name of institution: HUDSON COUNTY JAIL
(b) Address: 30-35 HACKENSACK AVE
KEARNEY, NJ 07032
(c) Your identification number: 346241
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
☒ Being held on an immigration charge
☐ Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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6. Provide more information about the decision or action you are challenging:
- (a) Name and location of the agency or court: DEPARTMENT OF HOMELAND SECURITY, ICE,
26 FEDERAL PLAZA, NY NY 10278
- (b) Docket number, case number, or opinion number: 091482153
- (c) Decision or action you are challenging (*for disciplinary proceedings, specify the penalties imposed*):
DETAINED BY DHS-ICE WHILE CASE PENDING.
- (d) Date of the decision or action:

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- ☐
- Yes
- ☒
- No

(a) If “Yes,” provide:

- (1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal:

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- ☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes

☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☒ Yes

☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: 03/06/2020

- (b) Date of the removal or reinstatement order: _____

- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Date of filing: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☒ Yes

☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: I-360 PETITION, I-601 AND I-212 WAIVERS

(b) Name of the authority, agency, or court: DEPARTMENT OF HOMELAND SECURITY, UNITED CITIZEN AND IMMIGRATION SERVICE, USCIS

(c) Date of filing: 11/25/2020

(d) Docket number, case number, or opinion number: EAC2006650204, EAC2006650224, EAC---240

(e) Result: PENDING

(f) Date of result: _____

(g) Issues raised: THE PETITIONER HAD APPLIED FOR THE PETITION AND WAIVERS AND THE CASE IS STILL PENDING BUT DHS ARRESTED THE PETITIONER WHILE THE CASE IS PENDING

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: DUE PROCESS VIOLATIONS AND BREACH OF THE IMMIGRATION AND NATIONALITY ACT

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

THE PETITIONER CASE IS PENDING. THERE WAIVERS APPLICATIONS AND PETITION PENDING.
KEEPING THE PETITIONER IN JAIL NOW IS FRUSTRATING DUE PROCESS

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☒ No

GROUND FOUR:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: TO ORDER RELEASE OF THE PETITIONER PENDING THE RESOLUTION OF THE PENDING CASES. STOP THE DEPROTATION OF THE PETITIONER.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 03/12/2020

Altagracia De La Cruz
By Daughter Signature of Petitioner

[Signature]
Signature of Attorney or other authorized person, if any